



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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DEC 3 1995

Geno Felix

REPLY TO THE ATTENTION OF:

D-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

EPA Region 5 Records Ctr.



247389

Mr. James Kirkland
Registered Agent for:
John Paul Enterprises, Inc.
111 W. First Street, #518
Dayton, Ohio 45402-1131

Re: Complaint and Notice of Opportunity
for Hearing Issued to:
John Paul Enterprises, Inc. and
Ohio Industrial Trading Company
5-TSCA-96-002

Dear Sir:

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., discovered by an Ohio Environmental Protection Agency inspector at the GHR Foundry, 400 Detrick Street, Dayton, Ohio.

I recommend that you carefully read and analyze the enclosed Complaint and Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day the violations cited herein continue constitutes a new violation for which additional penalties may be imposed.

If John Paul Enterprises, Inc., chooses to request a hearing to contest the facts alleged in the Complaint, you are required to request the hearing in your Answer, which you must file with the Regional Hearing Clerk within the prescribed time limit of twenty (20) days following service of this Complaint. A copy of the Answer and Request for Hearing should be sent to:

Timothy J. Chapman
Assistant Regional Counsel
U.S. EPA, Region 5 (CA-29A)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

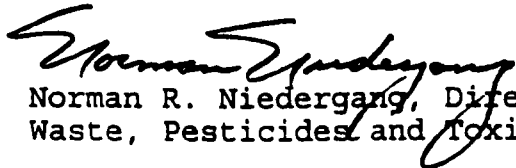
Mr. Chapman's telephone number is (312) 886-6829.

Our records indicate that Ohio Industrial Trading Company is no longer registered with the Ohio Secretary of State. However, Ohio Industrial Trading Company is still subject to this action because the violations occurred prior to the company's lapse of registration. See Chadwick v. Air Reduction Company, 239 F. Supp. 247 (N.D. Ohio 1965).

Failure to respond to this Complaint and Notice of Opportunity for Hearing by specific answer within twenty (20) days of your receipt of this Complaint constitutes your admission of the allegations made in the Complaint. Such failure may result in the issuance of a Default Order imposing the proposed penalties.

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. If you have any questions about this matter or desire to request an informal conference for the purpose of settlement, please contact the attorney whose name, address and telephone number are provided above.

Sincerely yours,


Norman R. Niedergang, Director
Waste, Pesticides and Toxics Division

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 08 1995

REPLY TO THE ATTENTION OF:

D-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Raymond Carcione, President
Ohio Industrial Trading Company
1203 W. 65th Street
Cleveland, Ohio 44102

Re: Complaint and Notice of Opportunity
for Hearing Issued to:
John Paul Enterprises, Inc. and
Ohio Industrial Trading Company
5-TSCA-96-002

Dear Sir:

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., discovered by an Ohio Environmental Protection Agency inspector at the GHR Foundry, 400 Detrick Street, Dayton, Ohio.

I recommend that you carefully read and analyze the enclosed Complaint and Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day the violations cited herein continue constitutes a new violation for which additional penalties may be imposed.

If Ohio Industrial Trading Company chooses to request a hearing to contest the facts alleged in the Complaint, you are required to request the hearing in your Answer, which you must file with the Regional Hearing Clerk within the prescribed time limit of twenty (20) days following service of this Complaint. A copy of the Answer and Request for Hearing should be sent to:

Timothy J. Chapman
Assistant Regional Counsel
U.S. EPA, Region 5 (CA-29A)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Chapman's telephone number is (312) 886-6829.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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55 DEC -8 9 49

IN THE MATTER OF:

JOHN PAUL ENTERPRISES, INC.
Dayton, Ohio,

and

OHIO INDUSTRIAL TRADING COMPANY
Cleveland, Ohio,

Docket No. 5-TSCA '96-0 02

Respondents.

COMPLAINT
and
NOTICE OF OPPORTUNITY FOR HEARING

I

COMPLAINT
GENERAL ALLEGATIONS

1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and Sections 22.01(a)(5) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(5), 22.13.

2. The Director, Waste, Pesticides and Toxics Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), is, by lawful delegation, the Complainant.

3. One Respondent is John Paul Enterprises, Inc. (hereinafter "Respondent JPE"), which is and was, at all times

relevant to this Complaint, a corporation organized under the laws of the State of Ohio.

4. One Respondent is Ohio Industrial Trading Company (hereinafter "Respondent OITC" or collectively with Respondent JPE as "Respondents"), which is and was, at all times relevant to this Complaint, a company registered with the Ohio Secretary of State.

5. The Polychlorinated Biphenyls ("PCBs") Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Fed. Reg. 7150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use regulations ("PCB Rule") were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514), and incorporated the disposal and marking regulations. The PCB Rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

6. At all times relevant to this Complaint, Respondent JPE was a "person" as defined at 40 C.F.R. § 761.3.

7. At all times relevant to this Complaint, Respondent OITC was a "person" as defined at 40 C.F.R. § 761.3.

8. At all times relevant to this Complaint, the Respondents were subject to the prohibitions of the PCB Rule as set forth at 40 C.F.R. Part 761.

9. The Respondents were, at all times relevant to this Complaint, the owners and operators of a facility located at 400 Detrick Street, Dayton, Montgomery County, Ohio ("the facility"), known as the GHR Foundry.

10. At all times relevant to this Complaint, the facility consisted, *inter alia*, of several buildings, including buildings known as the "Office Building," the "H-Building," and the "G-Building."

11. On June 17, 1991, representatives of the U.S. EPA inspected the facility to determine compliance with the PCB Rule.

12. At the time of the inspection, Respondents had two "PCB Transformers," as defined at 40 C.F.R. § 761.3, located outside between the Office Building and the H-Building.

13. At the time of the inspection, Respondents' two PCB Transformers located outside between the Office Building and the H-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

14. At the time of the inspection, Respondents had a PCB Transformer," as defined at 40 C.F.R. § 761.3, located inside the H-Building.

15. At the time of the inspection, Respondents had two transformers that each were "PCB-Contaminated Electrical Equipment," as defined at 40 C.F.R. § 761.3, located inside the H-Building.

16. At the time of the inspection, Respondents' PCB Transformer and PCB-Contaminated Electrical Equipment located inside the H-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

17. At the time of the inspection, Respondents had a "PCB Transformer," as defined at 40 C.F.R. § 761.3, located behind the H-Building.

18. At the time of the inspection, Respondents had six PCB "Large Low Voltage Capacitors," as defined at 40 C.F.R. § 761.3, located behind the H-Building.

19. At the time of the inspection, Respondents' PCB Transformer and six PCB Large Low Voltage Capacitors located behind the H-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

20. At the time of the inspection, Respondents had at least two transformers that each were "PCB-Contaminated Electrical Equipment," as defined at 40 C.F.R. § 761.3, located inside the G-Building.

21. At the time of the inspection, Respondents' PCB Contaminated Electrical Equipment located inside the G-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

22. At the time of the inspection, Respondents had nine PCB "Large High Voltage Capacitors," as defined at 40 C.F.R. § 761.3, located in the basement of the Office Building.

23. At the time of the inspection, Respondents' nine PCB Large High Voltage Capacitors located in the basement of the Office Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

24. At the time of the inspection, Respondents had 37 PCB "Large Low Voltage Capacitors," as defined at 40 C.F.R. § 761.3, located inside the G-Building in an area called the "PCB Storage Area."

25. At the time of the inspection, Respondents' 37 PCB Large Low Voltage Capacitors located inside the G-Building in an

area called the "PCB Storage Area" were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

26. At the time of the inspection, Respondents had 12 55-gallon drums filled with PCB oil at a concentration greater than 500 parts per million ("ppm") located inside the G-Building in an area called the "PCB Storage Area."

27. At the time of the inspection, Respondents' 12 55-gallon drums located inside the G-Building in an area called the "PCB Storage Area" were each a "PCB Container," as defined at 40 C.F.R. § 761.3.

28. At the time of the inspection, Respondents' 12 PCB Containers located inside the G-Building in an area called the "PCB Storage Area" were each a "PCB Item," as defined at 40 C.F.R. § 761.3.

29. At the time of the inspection, each of Respondents' PCB Items was in storage for disposal.

30. As a result of the June 17, 1991, inspection, the Complainant has determined that Respondent has violated the Federal regulations regarding the recordkeeping, storage, and marking requirements of the PCB Rule, 40 C.F.R. Part 761, and thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT I

31. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

32. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

33. At the time of the inspection, Respondents' two PCB Transformers that were located outside between the Office Building and the H-Building were stored for disposal in a storage area without an adequate roof, adequate walls, continuous flooring and continuous curbing.

34. Respondents' failure to place their two PCB Transformers in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT II

35. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

36. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage

Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

37. At the time of the inspection, Respondents' storage area located outside between the Office Building and the H-Building was not marked with the M_L label.

38. Respondents' failure to mark the storage area located outside between the Office Building and the H-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT III

39. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

40. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

41. At the time of the inspection, Respondents' two PCB Transformers located outside between the Office Building and the H-Building did not bear the date of when they were placed into storage for disposal.

42. Respondents did not date their two PCB Transformers located outside between the Office Building and the H-Building when they were placed into storage for disposal.

43. Respondents' failure to date their two PCB Transformers when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT IV

44. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

45. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_t label.

46. At the time of the inspection, Respondents' storage area located inside the H-Building was not marked with the M_t label.

47. Respondents failure to mark the storage area inside the H-Building with the M_t label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT V

48. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

49. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers, and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

50. At the time of the inspection, Respondents' PCB Transformer located inside the H-Building was not marked with the M_L label.

51. Respondents' failure to mark the PCB Transformer located inside the H-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT VI

52. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

53. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

54. At the time of the inspection, Respondents' PCB Transformer and two PCB-Contaminated Transformers located inside the H-Building did not bear the date of when they were placed into storage for disposal.

55. Respondents did not date their PCB Transformer and two PCB-Contaminated Transformers located inside the H-Building when they were placed into storage for disposal.

56. Respondents' failure to date their PCB Transformer and two PCB-Contaminated Transformers when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT VII

57. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

58. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

59. At the time of the inspection, Respondents' PCB Transformer and six PCB Large Low Voltage Capacitors that were

located behind the H-Building were stored for disposal in a storage area without continuous curbing.

60. Respondents' failure to place their PCB Transformer and six PCB Large Low Voltage Capacitors in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT VIII

61. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

62. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

63. At the time of the inspection, Respondents' storage area located behind the H-Building was not marked with the M_L label.

64. Respondents' failure to mark the storage area located behind the H-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT IX

65. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

66. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

67. At the time of the inspection, Respondents' PCB Transformer and six PCB Large Low Voltage Capacitors located behind the H-Building did not bear the date of when they were placed into storage for disposal.

68. Respondents did not date their PCB Transformer and six PCB Large Low Voltage Capacitors located behind the H-Building when they were placed into storage for disposal.

69. Respondents' failure to date their PCB Transformer and six PCB Large Low Voltage Capacitors when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT X

70. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

71. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_t label.

72. At the time of the inspection, Respondents' six PCB Large Low Voltage Capacitors located behind the H-Building were not marked with the M_t label.

73. Respondents' failure to mark the six PCB Large Low Voltage Capacitors located behind the H-Building with the M_t label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XI

74. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

75. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

76. At the time of the inspection, Respondents' two PCB-Contaminated Transformers that were located inside the

G-Building were stored for disposal in a storage area without continuous curbing.

77. Respondents' failure to place their two PCB-Contaminated Transformers in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XII

78. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

79. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

80. At the time of the inspection, Respondents' storage area located inside the G-Building was not marked with the M_L label.

81. Respondents' failure to mark the storage area located inside the G-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XIII

82. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

83. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

84. At the time of the inspection, Respondents' two PCB-Contaminated Transformers located inside the G-Building did not bear the date of when they were placed into storage for disposal.

85. Respondents did not date their two PCB-Contaminated Transformers located inside the G-Building when they were placed into storage for disposal.

86. Respondents' failure to date their two PCB-Contaminated Transformers when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XIV

87. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

88. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

89. At the time of the inspection, Respondents' nine PCB Large High Voltage Capacitors that were located in the basement of the Office Building were stored for disposal in a storage area without continuous curbing.

90. Respondents' failure to place their nine PCB Large High Voltage Capacitors in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XV

91. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

92. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

93. At the time of the inspection, Respondents' storage area located in the basement of the Office Building was not marked with the M_L label.

94. Respondents' failure to mark the storage area located in the basement of the Office Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XVI

95. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

96. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

97. At the time of the inspection, Respondents' nine PCB Large High Voltage Capacitors located in the basement of the Office Building did not bear the date of when they were placed into storage for disposal.

98. Respondents did not date their nine PCB Large High Voltage Capacitors located in the basement of the Office Building when they were placed into storage for disposal.

99. Respondents' failure to date their nine PCB Large High Voltage Capacitors when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XVII

100. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

101. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

102. At the time of the inspection, Respondents' 37 PCB Large Low Voltage Capacitors and 12 PCB Containers located inside the G-Building in an area called the "PCB Storage Area" did not bear the date of when they were placed into storage for disposal.

103. Respondents did not date their 37 PCB Large Low Voltage Capacitors and 12 PCB Containers located inside the G-Building in an area called the "PCB Storage Area" when they were placed into storage for disposal.

104. Respondents' failure to date their 37 PCB Large Low Voltage Capacitors and 12 PCB Containers when they were placed

into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XVIII

105. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

106. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

107. At the time of the inspection, 32 of Respondents' 37 PCB Large Low Voltage Capacitors located inside the G-Building in an area called the "PCB Storage Area" were not marked with the M_L label.

108. Respondents' failure to mark 32 of their 37 PCB Large Low Voltage Capacitors located inside the G-Building in an area called the "PCB Storage Area" with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XIX

109. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

110. The PCB Rule at 40 C.F.R. § 761.30(a)(1)(vi) requires that, as of December 1, 1985, all PCB Transformers in use or storage for reuse be registered with fire response personnel with primary jurisdiction (that is, the fire department or fire brigade which would normally be called upon for the initial response to a fire involving the equipment).

111. The PCB Transformer located, at the time of the inspection, inside the H-Building was in use or storage for reuse at the facility from before October 1988 through and including April 1991.

112. The PCB Transformer located, at the time of the inspection, behind the H-Building was in use or storage for reuse at the facility from before October 1988 through and including April 1991.

113. At the time of the inspection, Respondents' had not registered any PCB Transformers with fire response personnel with primary jurisdiction.

114. Respondents' failure to register their PCB Transformers with fire response personnel with primary jurisdiction constitutes a violation of 40 C.F.R. § 761.30(a)(1)(vi) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XX

115. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

116. The PCB Rule at 40 C.F.R. § 761.205(a)(2) requires that all generators of PCB waste who first engage in PCB waste handling activities after February 5, 1990, shall notify U.S. EPA by filing U.S. EPA Form 7710-53 with U.S. EPA prior to engaging in PCB waste handling activities.

117. Respondents first engaged in PCB waste handling activities after February 5, 1990.

118. At the time of the inspection, Respondents were engaging in PCB waste handling activities.

119. At the time of the inspection, Respondent was a "Generator of PCB waste" as defined at 40 C.F.R. § 761.3.

120. At the time of the inspection, Respondents had not filed Form 7710-53 with U.S. EPA.

121. Respondents' engagement in PCB waste handling activities prior to their filing of Form 7710-53 constitutes a violation of 40 C.F.R. § 761.205(a)(2) and Section 15 of TSCA, 15 U.S.C. § 2614.

PROPOSED CIVIL PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA. Based upon the facts alleged in Part I of this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

COUNT I

Improper Storage (Outside).....\$3,000

15 U.S.C. § 2614

40 C.F.R. § 761.65(b)

COUNT II

Improper Marking (Outside).....\$500

15 U.S.C. § 2614

40 C.F.R. § 761.40(a)

COUNT III

Improper Storage (Outside).....\$1,000

15 U.S.C. § 2614

40 C.F.R. § 761.65(c)(3)

COUNT IV

Improper Marking (H-Building)\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT V

Improper Marking (H-Building)\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT VI

Improper Storage (H-Building)\$6,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c) (8)

COUNT VII

Improper Storage (behind H-Building)\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(b)

COUNT VIII

Improper Marking (behind H-Building)\$3,000

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT IX

Improper Marking (behind H-Building)\$6,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c) (8)

COUNT X

Improper Marking (behind H-Building).....\$500

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XI

Improper Storage (G-Building).....\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(b)

COUNT XII

Improper Marking (G-Building).....\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XIII

Improper Storage (G-Building).....\$6,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c)(8)

COUNT XIV

Improper Storage (Office Building).....\$3,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(b)

COUNT XV

Improper Marking (Office Building).....\$500

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XVI

Improper Storage (Office Building)\$1,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c)(8)

COUNT XVII

Improper Storage (G-Building "PCB Area")\$6,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c)(8)

COUNT XVIII

Improper Marking (G-Building "PCB Area")\$500

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XIX

Improper Use\$20,000

15 U.S.C. § 2614
40 C.F.R. § 761.30(a)(1)(vi)

COUNT XX

Improper Waste Disposal\$25,000

15 U.S.C. § 2614
40 C.F.R. § 761.205(a)(2)

TOTAL PROPOSED CIVIL PENALTY\$147,000

Respondents may pay this penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall be sent to:

Branch Secretary
Pesticides and Toxic Substances Branch (SP-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

Complainant derived the penalties proposed in Part II of this Complaint by applying the factors enumerated above to the particular allegations that constitute the violations charged in this action. The reasoning for each assessment is delineated in the "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," 45 Fed. Reg. 59770 (September 10, 1980); and the "Polychlorinated Biphenyls (PCB) Penalty Policy," April 9, 1990 (Notice of Availability, 72 Fed. Reg. 13955 (April 13, 1990)).

III

OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., you have the right to request a hearing regarding the proposed Complaint, to contest any material fact contained in this Complaint, and/or to contest the appropriateness of the amount of the proposed penalty. Any hearing that you request will be held and conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the

"Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

If you wish to avoid being found in default, you must file a written Answer within 20 days of service of this Complaint with the Regional Hearing Clerk, whose address is:

Regional Hearing Clerk
U.S. EPA, Region 5 (MF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondents have no knowledge as to particular factual allegations in the Complaint. The Answer should also state:

1. The circumstances or arguments that you allege constitute the grounds of defense;
2. The facts that you intend to place at issue; and
3. Whether you request a hearing.

Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations.

A copy of this Answer and any subsequent documents filed in this action should also be sent to:

Timothy J. Chapman
Assistant Regional Counsel
U.S. EPA, Region 5 (C-29A)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Chapman may be telephoned at (312) 886-6829.

If you fail to file a written Answer, with or without a Request for Hearing, within 20 days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing under TSCA. The civil penalty proposed in this Complaint shall then become due and payable without further proceedings 60 days after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17(a). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15 after thirty 30 days, with an additional charge of \$15 for each subsequent 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six percent (6%) per annum penalty on any principal amount not paid within 90 days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

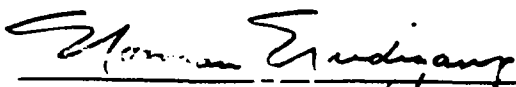
SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to the attorney whose name and address appear in Section III of this Complaint.

Your request for an informal settlement conference does not extend the 20 day period during which you must submit a written Answer and Request for Hearing. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a written "Consent Agreement and Consent Order" issued by the Regional Administrator.

The issuance of a Consent Agreement and Consent Order shall constitute a waiver of your right to request a hearing on any matter stipulated matter in the Consent Agreement.



Norman R. Niedergang, Director
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5 (D-8J)
Chicago, Illinois 60604-3590

Dated: 12/1/95

CERTIFICATE OF SERVICE

This is to certify that the ORIGINAL and a COPY of this Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk on December 8, 1995, and that a true and correct copy was mailed with the Consolidated Rules of Practice to Respondents:

Mr. James Kirkland
Registered Agent for:
John Paul Enterprises, Inc.
111 W. First Street, #518
Dayton, Ohio 45402-1131

Raymond Carcione, President
Ohio Industrial Trading Company
1203 W. 65th Street
Cleveland, Ohio 44102

Marlene Bronson 12/8/95

Marlene Bronson
Pesticides and Toxics Branch
U.S. Environmental Protection Agency
Region 5
Chicago, Illinois